

G. SCOTT EMBLIDGE, State Bar No. 121613  
emblidge@meqlaw.com

RACHEL J. SATER, State Bar No. 147976  
sater@meqlaw.com

ANDREW E. SWEET, State Bar No. 160870  
sweet@meqlaw.com

MOSCONE, EMBLIDGE, & QUADRA, LLP  
220 Montgomery Street, Suite 2100  
San Francisco, California 94104-4238  
Telephone: (415) 362-3599  
Facsimile: (415) 362-2006

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX JR., M.D.,

Plaintiff,

vs.

ALTA BATES SUMMIT MEDICAL  
CENTER,

Defendants.

Case No. C 07-2486 WHA

**PLAINTIFF'S MOTION IN LIMINE  
NO. 2 TO EXCLUDE EVIDENCE  
OF DISMISSED MALPRACTICE  
CLAIM; DECLARATION OF  
RACHEL SATER**

**Trial Date: June 2, 2008**  
**Dept: Ctrm. 9, 19<sup>th</sup> Floor**  
**Judge: Hon. William H. Alsup**

Plaintiff Coyness L. Ennix, Jr. ("Dr. Ennix") moves to exclude evidence and argument relating to a medical malpractice claim filed against Dr. Ennix which has been dismissed with prejudice without any payment by Dr. Ennix.

The sole issue in this case is whether race was a factor in ABSMC's peer review actions against Dr. Ennix that nearly ruined his career as a cardiac surgeon. That peer review addressed ten cases. With respect to one of those cases, a claim alleging product liability and medical

malpractice was filed against Dr. Ennix and the maker of a medical device used in that case—*Tong, et al., v. Medtronic, Inc., Coyness Ennix, M.D., et al.*, Alameda County Superior Court Case No. RG05197579 (“*Medtronic Case*”). However, the plaintiffs dismissed the suit with prejudice—without any payment by Dr. Ennix—in exchange for a waiver of costs and Dr. Ennix’s promise not to file a malicious prosecution action against the plaintiffs. The fact that a meritless suit was filed and dropped against Dr. Ennix has no probative value regarding ABSMC’s motivation or the veracity of its proffered justification of protecting “patient safety.” Nor is it probative with respect to whether Dr. Ennix met the standard of care in that case. Finally, any potential probative value would be substantially outweighed by the prejudicial impact of such evidence and the likelihood of misleading and confusing the jury.

Therefore, the Court should exclude evidence and testimony regarding the *Medtronic* case.

#### STATEMENT OF FACTS

Dr. Ennix claims that ABSMC discriminated against him based on his race in violation of 42 U.S.C. § 1981 in a peer review that began in early 2005 and concluded in July 2006. When it deposed Dr. Ennix, ABSMC questioned him regarding the *Medtronic* case. (See Sater Decl., ¶ 2, Exhibit A.) On April 24, 2008, the plaintiffs in the *Medtronics* case filed a request for dismissal with prejudice, including all claims and all causes of action. (Sater Decl., ¶ 3, Exhibit B.) Dr. Ennix paid no monies and agreed to waive costs and not to file a malicious prosecution action against the plaintiffs. (Sater Decl., ¶ 4, Exhibit C.)

#### ARGUMENT

This Court should exclude all evidence and testimony regarding the *Medtronic* case. Evidence is admissible if it is probative as to a “fact of consequence” and its probative value is not “outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” FRE Rules 401, 403. In this case, that someone filed a meritless suit against Dr.



DECLARATION OF RACHEL J. SATER

I, Rachel J. Sater, declare:

1. I am an attorney licensed to practice law in the State of California and in this Court. I am an attorney at Moscone, Emblidge & Quadra, LLP, counsel of record for the Plaintiff.

2. Attached hereto as Exhibit A is a true and correct copy of the deposition transcript of Dr. Ennix.

3. Attached hereto as Exhibit B is a true and correct copy of the Request for Dismissal filed in *Tong, et al., v. Medtronic, Inc., Coyness Ennix, M.D., et al.*, Alameda County Superior Court Case No. RG05197579.

4. Attached hereto as Exhibit C is a true and correct copy of a January 28, 2008 letter to Dr. Ennix from Robert Slatery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Dated: April 29, 2008

\_\_\_\_\_  
/s/  
Rachel J. Sater

1 MAUREEN E. MCCLAIN (State Bar No. 062050)  
Email: mcclain@kmm.com  
2 ALEX HERNAEZ (State Bar No. 201441)  
Email: hernaez@kmm.com  
3 KAUFF MCCLAIN & MCGUIRE LLP  
One Post Street, Suite 2600  
4 San Francisco, California 94104  
Telephone: (415) 421-3111  
5 Facsimile: (415) 421-0938

6 TAZAMISHA H. IMARA (State Bar No. 201266)  
Email: imara@kmm.com  
7 KAUFF MCCLAIN & MCGUIRE LLP  
2049 Century Park East  
8 Suite 2690  
Los Angeles, CA 90067  
9 Telephone: (310) 277-7550  
Facsimile: (310) 277-7525

10 Attorneys for Defendant  
11 ALTA BATES SUMMIT MEDICAL CENTER

12 UNITED STATES DISTRICT COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA

15 COYNESS L. ENNIX, JR., M.D.,  
16  
17 Plaintiff,

18 v.

19 ALTA BATES SUMMIT MEDICAL CENTER,  
20  
21 Defendant.

CASE NO. C 07-2486 WHA

**DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION IN LIMINE  
NO. 2 TO EXCLUDE EVIDENCE  
OF DISMISSED MALPRACTICE  
CLAIM**

**DATE:** May 19, 2008  
**TIME:** 2:00 p.m.  
**DEPT:** Ctrm. 9, 19th Floor  
**JUDGE:** Hon. William H. Alsup

**COMPLAINT FILED:** May 9, 2007  
**TRIAL DATE:** June 2, 2008

1 Plaintiff asks that this Court exclude evidence related to a malpractice  
2 claims made against him. Defendant does not intend to present any such evidence.  
3 However, pursuant to Fed. R. Civ. P 32(a)(1) & (8), Defendant reserves its right to use at  
4 trial Plaintiff's deposition testimony from this malpractice action. Defendant will do so  
5 without revealing the nature of the underlying malpractice action. Moreover, for the  
6 reasons stated in Plaintiff's motion, Defendant asks that evidence relating to any  
7 collateral litigation (i.e., malpractice actions or sexual harassment actions) against all  
8 members of ABSMC's Medical Staffs be excluded from evidence.

9 DATED: May 9, 2008

KAUFF MCCLAIN & MCGUIRE LLP

11 By:   
12 ALEX HERNAEZ

13 Attorneys for Defendant  
14 ALTA BATES SUMMIT MEDICAL  
15 CENTER